

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2009 SEP -4 A 9:44
DISTRICT OF UTAH

VICTORIA SETHUNYA and CLETUS
SETHUNYA,

Plaintiffs,

vs.

BONAIR MANAGMENT, LLC; SHALISE
VIGIL; and JOHN DOES,

Defendants.

**ORDER RE: REPORT AND
RECOMMENDATION**

Case No. 2:09-cv-0249 CW

District Judge Clark Waddoups

Magistrate Judge Samuel Alba

This case was assigned to United States District Court Judge Clark Waddoups, who then referred it to United States Magistrate Samuel Alba under 28 U.S.C. § 636(b)(1)(B). On July 6, 2009, the Magistrate Judge held a hearing on a Motion to Dismiss for Lack of Jurisdiction. After the hearing, and before a Report and Recommendation was issued, Plaintiffs filed a Motion to Appeal the Decision to Dismiss Without Prejudice. Although the motion was filed before the Report and Recommendation was issued, it addresses the issues raised at the hearing. The court will therefore treat the motion as an Objection to the Report and Recommendation.

In their complaint, Plaintiffs allege that Defendants treated them differently than other tenants in their apartment complex on account of their race. Plaintiffs did not assert, however, a specific claim under the Fair Housing Act, 42 U.S.C. § 3604. Consequently, Judge Alba concluded that the court lacked subject matter jurisdiction because Plaintiffs failed to present a federal question.


Prior to the hearing, Plaintiffs filed a Motion to Amend the Complaint to assert Defendants

“violated Plaintiffs civil rights to fair housing.”¹ Plaintiffs’ Objection specifically asserts that their claim falls under 42 U.S.C. § 3604. While Plaintiffs’ Amended Complaint lacks these specific allegations, it is apparent that if Plaintiffs are allowed to amend their complaint, they intend to raise this federal question in it. Thus, granting Plaintiffs leave to amend their complaint is appropriate.

Accordingly, the court APPROVES AND ADOPTS Judge Alba’s recommendation² to dismiss the first Amended Complaint that was filed on March 25, 2009. Plaintiffs, however, are hereby GRANTED leave to amend their complaint. Plaintiffs shall file their second amended complaint on or before **Friday, October 16, 2009**.

SO ORDERED this 3^d day of September, 2009.

BY THE COURT:


Clark Waddoups
United States District Judge

¹ Motion to Amend the Complaint, l.a. (Docket No. 22).

² Report and Recommendation (Docket No. 31).